INDEX.

A.

Abatement, plea in, 120.
Accession, 271.
ACCORD AND SATISFACTION, 337.
Account of Sales, 35.
Action, 319.
Action of money had and received, 74, 80, 224.
Action by counsel for services, 121.
Addison on Contracts, received, 184.
Administrator (see Executor), 37, 180, 207.
Adultery.

1. *Held*, that the husband of a woman with whom the act was committed, was not a competent witness to prove the act. State *v.* Wilder, 120.

2. A wife's insanity is not a bar to a divorce for adultery committed by her when insane. Matchin *v.* Matchin, 266.

3. Her confession of the fact is competent evidence only when corroborated by circumstances and free from suspicion of collusion, *ib.*

4. The confession of her paramour is evidence against her only when it has been communicated to her and confirmed by her, *ib.*

5. The fact may be proved by circumstantial evidence, *ib.*

ADMIRALTY, 193.

1. If goods are landed at the wrong place by the master of a chartered vessel, and then reloaded, the expense must be borne by the master or owners: though if landed by mate during the master's illness, at the request of an agent of the charterers, the latter is liable for the expense. Weston et al. *v.* Minot et al. 305.

2. Where a vessel is chartered, &c., to carry all lawful goods, to the entire capacity of the vessel, it must be considered to mean all goods not contraband nor diseased; and as many of them as can be put on board without making the vessel draw too much for safety, *ib.*

3. If the charterers were to pay the expense of steam-towing in case she should draw over seventeen feet of water, and they should order the use of steam; they were not held liable when she drew over eighteen feet and used steam, if they gave no such order, and if vessels often went without steam though drawing over seventeen feet, *ib.*

4. The master may refuse to receive goods before his ship is full, if the charterers have already put on board such heavy articles that she is sunk as low as is consistent with safety, *ib.* The *tests* of safety, *ib.*

5. If the vessel thus took on board in weight nearly double her measured tonnage, and was in good repair and was well manned, she was not a defective or imperfect vessel; though she would not bear filling up entirely with a cargo, most of which consisted of such heavy articles as saltpetre and linseed, *ib.*

6. A survey of the vessel by other sea captains, who reported and swear to the truth of the result, is not conclusive as to her proper depth; but is a sound measure of precaution in a dispute between the master and the charterers.

7. Freight cannot be apportioned unless from some expression in the contract, the nature of the voyage, or some act of the hirer of the vessel, or measure of the government, an apportionment becomes feasible and just, *ib.*

8. The court inclines to sustain the conduct of a master, whenever it seems to have been the result of a watchful care over life and property, if it be done openly, after full notice to the other party, and under circumstances not indicative of extreme timidity or selfishness, *ib.*

ADMIRALTY, COSTS IN THE, 241, 326, 420.
Agency, 34, 37.
Agent, 231, 277, 323. (See *Principal.*)
Agreement, 225.
Aliens, 37.
Alien friend, right of, to sue, 35.
Allen's (Judge) Treatise on Mortgages, 95.
Allowance to widow, 79.
Anecdote, 525.
Angell on Tide Waters received, 138; notice of, 235.
Apology of Editor, 46.
Appeal, 37.
Arbitration, 177, 271.
Arrest, bond of liberation from, 119.
Arson, trial for, 236.
Assets. See *Equity*.
Assignee, attachment by trustee process of funds in hands of, 69.
Assignment, 37, 226.
Assignment by insolvent debtor at common law, for benefit of creditors, 69.
Assumpsit, 177, 271, 319. See *Pleading*.
Attachment, 38, 118, 249; lien by, 264, 319.
Attachment by trustee process of funds in the hands of an assignee, 69.
Attorneys, 156, 143, 226.
Attorney, cannot act as advocate and witness in same cause, 136; in England, 143; agreement of to claim nothing for services if *unsuccessful*, is illegal, 318.
Auction sale, 38, 82.
Authority to employ Counsel, 121.
Autrefois Acquit, plea of, 185.
Award, 271, 319; statement of case for, 352, 464.

B.

Bacon, Lord, on decorum of the judicial office, 190.
Bailment, 226, 464.
Bank, 319; lien on produce, 381.
Banker's Magazine, 46.
Bankruptcy and Bankrupt Law, 223, 227, 271.
Bar rules in Maine, 45; of Ireland, 143.
Beavan's Reports, Vol. VII., received, 138.
Bequest in lien of dower, 79.
Bills of Exchange and promissory notes, 82, 227, 271, 320.
Bigamy. One cannot be indicted for bigamy who had been three times married, but whose first wife died before either of the subsequent marriages, and whose second wife was the sister of his first wife. Regina *v.* Chadwick, 458.
Birchard, C. J., letter from, 521.
Blackstone, Wendell's, Notice of, 282.
Bond for liberation from arrest, 119.
Bosanquet, Sir John B., Obituary notice of, 334.
Brashears, Samuel, Obituary notice of, 430.
Bridges over tide waters, 127.
Brougham, Lord, notice of, 139; remarks of, 525.
Bankruptcy.
1. Under the law of 1841, the decree of discharge is a judicial decree and conclusive, unless in case of fraud or concealment. The plaintiff, therefore, cannot reply to the plea of bankruptcy, that the defendant did not become a bankrupt; did not comply with the statute; or did not obtain a discharge. Price *v.* Bray, 223.
2. A plea of bankruptcy must show the jurisdiction of the court by an averment of the filing of a petition to be declared bankrupt, by a bankrupt resident in the district in which he obtained his discharge, or it will be insufficient on general demurrer; otherwise the defect will be waived by pleading over, *ib.*
3. *Semble*, if the jurisdiction be shown, the plea will be sufficient if set out in the decree of discharge after a *taliter processum est*, *ib.*
4. The plea of bankruptcy should conclude with the ordinary verification, *ib.*
Bury's Case, 383.
Buchanan, Thomas, Obituary notice of, 335.
Burge on Suretyship, notice of, 284.
Byington, Horatio, appointed judge, 525.

C.

Campbell's Lives of the Lord Chancellors, notice of, 520, 576.
Carriers Common, 82, 115, 272, 524.
Case of Oliver Smith's Will, 289.
Case of Charretie and Young, 481.
Cases overruled, doubted or explained, 257, 273.
Certiorari, 77, 416.
Challenge of Jurors.
1. Where, on trial of an indictment for a capital offence, the prisoner objects to jurors for cause, his objections are overruled, he takes exceptions to the ruling, and afterwards challenges the same jurors peremptorily, and they do not serve, he cannot afterwards take advantage of those exceptions. Freeman *v.* The People, 13.
2. When a juror is challenged for principal cause or to the favor, the ground should be distinctly stated; or the challenge is incomplete, and may be disregarded by the court, *ib.*
3. Where exceptions were taken to a charge to triers, in a capital case, and the exception extended, in terms, "to every part and portion" of the charge, the exceptions cannot be overruled as deficient in certainty, *ib.*
4. Where the court instructed the triers, as matter of law, that having formed an hypothetical opinion does disqualify a juror, the instruction was erroneous. The question should be whether they were convinced that actual bias existed, *ib.*
5. It is also erroneous to instruct the triers, that a resort to triers by a challenge to the favor, is in the nature of an appeal from the decision of the court.
6. Peremptory challenges of jurors need not be made at the same time, but the parties may alternate. Driskell *v.* Parish, 395.
7. The jury cannot be asked generally, whether their conscientious scruples on the slavery question will prevent them from giving a verdict for the plaintiff, but such a question may be put to the members separately, *ib.*
Chancery, 177.
Chandler, P. W. 287.
Charters, 305.
Choate, Rufus, 299.
Circuit Court of the U. S. 227.
City Bank, the, *v.* Huston *et al.* 190.
Civil Suit, for special damage, 127.
Collector, Deputy, 83.
Collyer on Partnership, (by J. C. Perkins,) notice of, 473.
Commerce, regulation of by Congress, 301.
Common Law, offences at, 127.
Conspiracy. See *Indictment*. A conspiracy to do an act punishable by statute cannot be more severely punished than would its successful perpetration be. Hartmann *v.* The Commonwealth, 556.
Constitution, of Liberia, 523.
Constitutional Laws, 127, 178, 228, 264, 301, 400. 488.
Construction, 119, 127.
Contempt, 127.
Contract, 34; to take stock, 201.
1. A contract entered into, in a state where there is no law prohibiting secular labor upon Sunday, is not so far *contra bonos mores* as not to form the proper subject-matter of an action in our courts. Adams *v.* Gay, 348.
2. The statute laws of another state, when relied on as a defence to a contract, must be proved like any other facts in the case and cannot be supplied in the court of errors by producing there the statute book of that state, *ib.*
3. All secular contracts consummated on Sunday are void, so that no action can be maintained on them, *ib.*
4. Even for fraud or false warranty unless the contract were reaffirmed on some other day, *ib.*

5. But in such cases, if either party has done anything in execution of the contract, it is competent for them on some other day to demand a release of the thing delivered: if refused, the original contract is affirmed and binding, *ib.*

6. This is an exception, but indispensable to secure parties from fraud practised on Sunday by those who know their contracts are void, and that they are not liable *civiliter* even for frauds practised on that day, *ib.*

7. An offer to contract, communicated by post, must be considered as continually made until it reaches the other party. If he accepts before knowledge of a retraction of the offer, the contract is binding. Hamilton *v.* Lycoming Ins. Co. 499.

8. A contract, the consideration or object of which is in violation of law, is void, and a court of justice will not lend its aid to enforce it. Smith et al. *v.* Barston, 512.

9. But a subsequent contract, if unconnected with the illegal act, and for a new consideration, is valid, and will be enforced, although it may have grown out of the illegal transaction, and the party to whom the promise was made may have had knowledge of it, *ib.*

10. Mere misrepresentation will not avoid a contract. Atkinson *v.* Pocock, 517.

Specific performance of, 514.

Conviction, 320.

Copyright, 83.

Copyrights and *abridgments*, 525.

1. In a suit for violation of copyright, brought by the assignees of the copyright, the assignments, although not recorded, are still valid as between the parties, and as to all persons, like the defendants, not claiming under the assignees. Webb et al. *v.* Gray et al. 153.

2. Some similarities and some use of prior works, even to the copying of small parts, are tolerated in some kinds of books, such as dictionaries, &c. *ib.*

3. A subsequent compiler must not use so much of the arrangement and materials of one prior, as to show a substantial invasion, and without novelty and improvement, *ib.*

4. The leading inquiry, in such a case is whether the defendant's book is substantially a copy; has substantially the same plan and motive;—is intended to supersede the other with the same class of readers and purchasers without introducing new matter; with only colorable deviations, *ib.*

5. How far the purchase and sale of the defendants' book by the plaintiffs, or the delay of the latter to bring a suit, may operate as a bar,—*quære*, *ib.*

6. *Held*, that the copying of certain definitions, did not, in itself, constitute a violation of the copyright; but that, taken together with the copying of a new feature in the *arrangement* of the materials, both together might constitute an infringement, for which an action at law would lie. But it was *held* that they did not furnish a sufficient ground for an injunction; especially where the arrangement pervaded the whole work, and could not easily be separated; and where there was no intention of piracy from the plaintiff's work, *ib.*

7. But where the violation is clear, and the part copied can be easily separated, an injunction is usually proper against that, part, *ib.*

Copy exemplified, of judgment, 35.

Corporation.

1. In New York a general replication to a plea of *nul tiel corporation* is given by statute, and in such a replication it is not necessary to set forth the proceedings by which the corporation was created. Auburn and Owasco Canal Co. *v.* Leitch, 201.

2. Such a replication ought to conclude with a verification, *ib.*

3. A contract to take stock in an incorporated company and pay for it in instalments, as calls shall be made, is of a very special nature, and must be declared on specially, *ib.*

4. General *indebitatus assumpsit* counts on such a contract, are bad on general demurrer, *ib.*

5. Corporations may contract by parol within the sphere of their proper functions. Hamilton *v.* Lycoming Ins. Co. 499.

Corporation, 83, chartered by state laws, 217, 180, 228, *quasi*, 257.

Corry's Review of 15 Ohio Reports, 239, notice of, 419.

Costs, 83.

Costs in Equity, 34, 250, 257.

Costs in the Admiralty, 241, 326, 429.

Counsel. See *Attorney.*

Counsel, authority to employ, 121; action by, for services, 121; principles in which compensation of, to be estimated, 121, 226; in competent witnesses, 333.

Counterfeit coin, law of U. S. prohibiting the circulation of, constitutional, 400.

County Commissioners, power of to discontinue part of a road laid out jointly with another county which lies in their own county, 77.

Covenant, 320.

Craig & Phillips's Reports (Am. ed.) received, 40.

Crimes and penalties, 127.

Criminal law and admiralty process, 127.

Curtis, Geo. T., 46; on copyright, notice of, 377.

Cushing, Luther S., 525.

D.

Damages, 35, 129.

Damages, Rule of, in Actions ex Delicto, 49, 188.

Davis's, J. C. B., Massachusetts Justice, 232.

Debtor. See *Poor Debtor.*

Deceit, action of, for using trade marks, 35.

Decorum of the judicial office, 190.

Deed, 320, 464.

Default, 73.

Defect, in highway, 75.

Delay to prosecute, 35.

Demurrer. See *Pleading.*

Denio's (N. Y.) Reports, Vol. II., notice of, 184.

Deputy Collector, 83.

Desertion, 83.

Deviation, 70.

1. It is settled in the law of insurance,

that the delay to save life is not a deviation, and that delay soley to save property is. Crocker *v.* Jackson, 70.

2. Where a vessel was seen in distress by another, and it was impracticable, at the time, to board the former, and both vessels were drifting out of their course, and time was saved by taking the former in tow, it was *held*, that it was not a deviation to do so, *ib.*

3. And although the master of the latter vessel was actuated by a double motive, to relieve distress and to save property, it was *held*, that his conduct was justifiable, and therefore did not constitute a deviation, *ib.*

4. Whether a previous deviation would render a ship-owner liable to a freighter for a subsequent loss, not connected with it, — *quære*, *ib.*

Devise. A devise to "M. with her husband J. S." is a devise to the two as husband and wife, and cannot be construed as a mere recognition of his tenancy by the curtesy. Martha Simmons's Estate, 563.

Digest of Maryland Reports, notice of, 235.

DIGEST OF AMERICAN CASES; Selections from 3 Story's (United States Circuit Court) Reports, 37, 82, 131; Selections from 5 Howard's (Supreme Court) Reports, 177; Selections from 2 Denio's (N. Y.) Reports, 224: Selections from 7 Hill's (N. Y.) Reports, 271; Selections from 10 Metcalf's (Mass.) Reports, 319; Selections from 1 Woodbury & Minot's Circuit (Mass.) Reports, 464.

Distraint, collection of taxes by, 74.

Division of opinion, 35.

Divorce, 266, 273.

Douglass's Reports, Vol. I., notice of, 90.

Dower, inchoate right of, an existing incumbrance, 75; bequest in lieu of, 799, 229.

Dunn, The Queen *v.*, 73.

Duress, 73.

Durfee, Job, Obituary notice of, 239.

E.

Election, widow's, 79; of judges by the people in N. Y., 94.

Endorsers, notice to, 80.

Equity, 32, 73, 74, 84, 124, 152, 207, 249, 464; costs in, 32; jurisdiction of U. S. Courts as to redress in, 32; practice, 32; fraud, 32, 73; agency; contracts, 32; jurisdiction, 73; specific performance, 207; offset, 207.

1. Where the bill alleged the plaintiffs to be citizens of the United States, and this is not denied in the answer, it must be considered as admitted, although no evidence of citizenship is offered. Webb et al. *v.* Powers et al., 153.

2. The report of a master in chancery may be reëxamined, although the presumption is in its favor, *ib.*

3. In marshalling assets, in equity, the partnership creditors must first exhaust the partnership funds, before resorting to the separate effects of the partners; but beyond this both debts of creditors stand precisely equal, both in law and in equity. Budwell *v.* Perry, 257.

Estate for life, 113.

Estoppel, 321.

Evidence, 35, 180, 273, 321.

1. The entry of the names of owners of shares in mines in the "cost book," is *prima facie* evidence of the rights of parties as between themselves, but between those parties and strangers, the cost book cannot be introduced as evidence for any purpose.

2. Consequently, if a bill be brought for specific performance of a contract to purchase certain shares, it will be necessary for the vendor to show the title of himself and of his co-adventurers to the shares of the mines by some stronger evidence than the cost book. Curling *v.* Flight, 513.

Examination in Ohio, 46; in Mass., 46.

Executors and Administrators, 180, 322.

Executor, duty of, 113.

1. A. W. paid for land, took a bond for a deed, and went into possession — died, devising land to his children as tenants in common, appointing one of them, J. W., executor. J. W. took a deed from the obligor to himself, described, however, as executor. *Held*, in a petition for petition by the other devisees, that he could not set up the deed to show the entire legal title in himself and defeat the petition. Brooks et ux. *v.* Whitney et als., 113.

2. An executor's or administrator's gratuitous promise to pay the testator's or intestate's debt, does not bind him in his representative or in his individual capacity. Forney *v.* Benedict, 173.

Extradition, 465.

F.

Flats, 76, 78.

Flowage, 467.

Forbes, Charles H. 525.

Form of oath, 120.

Fox, Addison, Obituary notice of, 46.

Fox v. Ohio, the case of explained, 400.

France. See *Treaty.*

Fraud, 34, 73, 89, 465.

Where one by fraud has recovered of government indemnity for injury done to the property, who himself was unable to make claim, the receiver is accountable to the party whose property was injured. Lestapies *v.* Ingraham, assignee, 446.

Frauds, Statute of, 34, 73, 89, 465.

Fraudulent sale, 118.

Freight, apportionment of. See *Admiralty.*

French Criminal Cases, 328.

G.

Gilman's (Ill.) Reports, notice of, 518.

Golden rules for examination of witnesses, 475.

Goldthwaite, Henry, Obituary notice of, 431.

Grants, royal, nature of, considered, 505.

1. A proprietary grant of oyster-beds or land below high water mark, is of no validity. Gough *v.* Bell, 505.

2. The rights (by royal grant) of a riparian proprietor only extend to high water mark, *ib.*

3. Although, as a general rule, the riparian proprietor should have the preëmption for a reasonable time of the shores and flats adjoining their premises, yet until there be a general law, the whole matter rests with the legislature, *ib.*
Gratuitous promise *inter nos*, 173.
Greenleaf, Simon, Review of his article on the rule of damages in actions ex delicto, 49.
Greenleaf on Evidence, Vol. II., notice of, 519.

H.

Habeas Corpus. See *Poor Debtor, Treaty*.
Hale's Pleas of the Crown, notice of 2d edition, 283.
Hamilton's Letters, notice of, 138.
Harboring slaves. See *Obstruction*.
Hare and Wallace's Select Decisions, notice of, 284.
Harper William, Obituary notice of, 335, 382.
Highway, defect in, 75.
Hill's Reports, (N. Y.) Vol. VII., notice of, 91.
Holcombe's Leading Cases, notice of, 183.
Holcombe's Digest, notice of, 520.
Holthouse's Law Dictionary, notice of, 39.
HOLDER BORDEN, CASE OF THE SHIP, 193. HOTCH-POT.
Editor's Apology, 46.
Benber's Magazine, 46.
Examination in Supreme Court of Ohio, 46.
Examination for admission to C. C. P. of Mass. 46.
Mr. Sedgwick's reply to "S. G." 46.
Work on Copyright, by Geo. T. Curtis, Esq. in preparation, 46.
Election of Judges by the people in N.Y. 94.
Millerism, interesting case before referees, 94.
Mr. Webster's remarks to the Charleston Bar, 94.
New Constitution of New York, 95.
Treatise on Mortgages, by Judge Allen, of Maine, 95.
Resignation of C. J. Williams, of Conn. 95.
Errors of punctuation in "Laws published by authority," 143.
Boston Post's contempt of Law Reporter, 143.
Improper convictions, 143.
Number of attorneys in England, 143.
Woodbury and Minot's Reports, 143.
The Irish Bar, 143.
Howard's Reports, Vol. V. 143.
Severe Notice of Ohio Reports, Vol. XV. 189.
Important Decision at New Orleans, in The City Bank *v.* Huston and others, 190.
Decorum of the judicial office, 190.
Anecdote of Lord Thurlow, 190.
Second notice of Ohio Reports, 238.
Notarial Duties in Louisiana, 238.
Boston Whig's Report of Meads *v.* Cushing, 238.
Resignation and appointments of Law Professors at Yale College, 238.
Ingenious Objections Overruled, 238.
Curious Sheriff's Return in Pennsylvania, 238.
Judge Kent's Letter to the Dane Law School, 332.
Statement of case for Award, 332.
Writ of Right, 333.
Litchfield Law School, 333.
Counsel incompetent witnesses for their clients, 333.
Important Decision to holders of real estate, 333.
Robbery of Clerk's office of C. C. P. in New Hampshire, 333.
Redfield, J., Opinion of in Claflin *v.* Wilcox, 333.
Bank Liens upon Produce, 381.
A man's shop not his castle, 381.
Points Decided by the Supreme Court of Pennsylvania, 382.
Chancellor Harper, 382.
Anecdote of the Senator from Ohio, 428.
Treatment of persons detained as witnesses, 428.
Anecdote of the late Chief Justice of the C. C. P. 478.
Chancellor Walworth, 478.
Illinois Practice, 525.
Speech of Lord Brougham, 525.
Judicial appointments in Massachusetts, 525.
Howard's Reports, Vol. V. 143.
Hubbard, Samuel, Obituary notice of, 478.
Huntington, Jabez W., Obituary notice of, 383.
Husband and wife, 120; liability of, 120; statute of Ohio in relation to wife's estate, 427. See *Devise*.
Huston and others, The City Bank *v.*, 190.

I.

Improper Convictions, 143.
Incumbrance, inchoate right of dower is an, 75.
Indebitatus assumpsit, 201.
Indictment, 77; for a nuisance, 127, 400.
1. In an indictment for a conspiracy to do an act unlawful in itself, or in the means to be employed in its accomplishment, if the intended purpose be an offence at common law it is sufficient to set it out by that name; otherwise, it should be brought within the terms of the statute. Hartmann *v.* The Commonwealth, 556.
2. The obtaining of false credit otherwise than by false tokens, and the removal and secretion of goods in order to defraud creditors, are not indictable at common law, *ib.*
Infant, 322.
Injunction, in Copyright case, 153, 467.
Insanity. See *Adultery*.
INSANITY, PLEA OF IN CRIMINAL CASES, 1, 97.
1. Though other modes of determining the question of insanity, as a preliminary question, may be resorted to, a trial by jury is regarded as the most discreet and proper course. Freeman *v.* The People, 12.
2. A preliminary trial of the question of insanity is not a trial of the indictment, within the meaning of the statute allowing exceptions to be taken, and they cannot then be regularly taken and carried up, *ib.*
3. The prisoner has not the right to challenge peremptorily on such preliminary trial, *ib.*
4. The triers of challenges to jurors, drawn

for such preliminary trial, should not be sworn to try and find whether the juror was indifferent between the people and the prisoner "upon the issue joined;" but whether the juror was indifferent between the people and the prisoner, *ib.*

5. An instruction to the jury, that the main question was, whether the prisoner knew right from wrong, and that if he did, then he was to be considered sane, was erroneous. But if a prisoner is capable of understanding the nature and objects of the trial, and his own condition in reference thereto, and can conduct his defence in a rational manner, he is, for the purpose of being tried, to be deemed sane, *ib.*

6. A verdict of the jury that the prisoner is "sufficiently sane, in mind and memory, to distinguish between right and wrong," is defective, *ib.*

7. The verdict of the jury on the preliminary issue of insanity, cannot be considered as conclusive upon the trial of the indictment; and in strictness, is not before the court and jury on the trial of the issue of guilty or not guilty, nor in any respect material thereto, *ib.*

8. A medical witness for the defence may be asked his opinion as to the insanity of the prisoner, at the time of the offence, though founded on an examination made by him four months afterwards. But the lateness of the time and the character of the malady, are to be considered in determining the weight of such opinion, *ib.*

Insolvents in Massachusetts, Monthly list of, 47, 95, 144, 191, 240, 288, 335, 384, 431, 479, 565.

Insolvent Law of Massachusetts, the, 385.

Insolvent Law, (see *Bankruptcy, Partnership, Poor Debtor,*) 44, 69, 264, 385.

1. A warrant was issued against an insolvent, appointing the first meeting of the creditors December 26th. The messenger advertised that the meeting was to be December 20th. The meeting was in fact held on the 26th, and an assignee appointed. *Held*, the proceedings were void. Ex parte Wedge, 117.

2. Where an assignee, under the statute of Massachusetts for the relief of insolvent debtors, had exercised undue influence in procuring his appointment as assignee, and his interests were adverse to those of the other creditors, and he had used improper means since his appointment, to secure a preference to himself for his claims against the insolvent debtor, the Court ordered that he should be removed, that his assignment should be revoked, that the master in chancery should call a meeting of the creditors to choose another assignee, and that the former assignee should make to the new assignee all necessary conveyances. Shelton et al. *v.* Walker, 124.

Insolvent Laws, 467.

Insurance, (see *Deviation,*) 70, 230, 274, 322, 468,

The plaintiff having an interest in a building, applied to the agent of a mutual company for insurance, and, at the same time, made the necessary cash payment and executed the premium note. The application being transmitted to the Company, an alteration in the building was directed, and an authority required from the trustees of the building to effect the insurance. This was communicated to the plaintiff by the Secretary, who stated that, when the Company were duly certified these had been complied with, a policy would be sent. The conditions were complied with and the agent requested to call and examine, but he neglected to do so. *Held*, the risk commenced from such notification of compliance with the terms of the conditional agreement. Hamilton *v.* Lycoming Ins. Co. 498.

Insurance upon Profits, 433.

Intelligence and Miscellany, Pardoning Convicts to make them Witnesses, 41; Insolvent Law, 44; Trial of Negroes in Alabama, 44; Bar Rules in Maine, 46; Mr. Webster and the Charleston Bar, 92; Queen *v.* Dunn, 93; License Laws, 94; Lord Brougham, 139; A Letter from Tennessee, 142; The Election in New York, 143; Autrefois Acquit, 185; The Rule of Damages, 188; Trial for Arson—Plea of Insanity, 236; Quasi Corporations, 237; Statute of Frauds, 285; Resignation of Prof. Kent, 286; Costs in the Admiralty, 326; French Criminal Cases, 328; Important Movement in New York, 330; Legislation for Insane Prisoners, 331; Case of Oliver Smith's Will, 331; The Metzger Case, 378; Costs in the Admiralty, 420; Stillwell Warrants, 422; Reminiscences of Vermont Judges, 423; Salaries and Fees—The County Clerk of the City of New York, 425; Statute of Ohio in relation to the interest of husbands in the estate of their wives, 427; The Doctrine of Prescription applied to Nuisances, 428; Golden Rules for the examination of Witnesses, 475; New York Commission, 477; The Ohio Controversy, 521; Opinion of the Court in Barton's Lessee *v.* Morris, 521; Constitution of Liberia, 522; Common Carriers, 524; Law School in New Jersey, 524; Copyrights and Abridgments, 525.

Interest, 119.

Internal Commerce and Police, 127.

Irish Bar, The, 143.

J.

Judgment, exemplified copy of, 35, 468.

Judicial office, decorum of the, 190.

Judicial Appointments in Massachusetts, 525.

Jurisdiction of U. S. Courts, 34, 127, 333.

Jurisdiction, 73, 77, 180, 264, 417, 457, 468. See *Treaty.*

Jurors, Challenge of, 13. See *Challenge.*

Jury, 322.

Jus publicum and *jus privatum*, 127.

Justice of the peace, 73.

K.

Kendall, Joseph G., Obituary notice of, 335.

Kent, James, Obituary notice of, 429.

Kent, William, Resignation of, 286; Letter of, to Dane Law School, 332.

L.

Landlord and Tenant, 275.

Laws of the U. S. (Minot's ed.) notice of, 138.
Law's Delay in Massachusetts, 145.
Leading Cases, notes of, 135.
Lease, 89.
Letter from Tennessee, 142.
Legislative power, exercise of by the people, 375.
Lewis's Abridgment of Criminal Law, notice of, 419.
Liability of teamster's servant, 75; of railroad proprietors, 117; of husband, 120; of owners of mischievous animals, 136; of assignee of land on which perpetual rent has been reserved for payments of rent accruing after he has assigned over, 441.
Libel, 89; and slander, 135; law of, in Mass. 216, 230.
Liberia, Constitution of, 522.
License Laws, 94; pleading, 238.
Lien, 230; of Banks upon produce, 281; the lien of a firm of solicitors for professional services will not attach to papers of their client, which came into their possession after their firm had been changed by the admission of a new member. *In re Forshaw*, 516.
Life estate, 113.
Limitations, statute of, 81, 175, 275.
Litchfield Law School, 233.
Low water mark, 76.
Lyman, Joseph, Obituary notice of, 431.

M.

Maine, Bar rules in, 45.
Malicious prosecution, 230.
Massachusetts Practice, 529.
Massachusetts Justice, The, received, 184; notice of, 232.
Massachusetts, The Law's Delay in, 145.
Massachusetts State Record, notice of, 520.
Meads v. *Cushing*, Report of in Boston Whig, 238.
Memorandum check, 80.
Merrill, Benjamin, Obituary notice of, 239.
Messenger's Warrant invalid without a seal, 264.
Metcalf, Theron, 525.
Metzger's Case, 357, 373.
Millerism, Curious case at Boston, 94.
Ministerial officers, 74.
Misdemeanors, 127.
Misrepresentation, 517.
Mistake, 469.
Money had and received, 74, 80, 224.
Mortgage, 276, 322, 468.
Motion for injunction; notice to be given to defendant, 81.
Municipal Court, jurisdiction of, 73.
Mylne & Craig's Reports, Vol. IV., (Am. ed.) received, 40.

N.

Naturalization, 276.
Naval Offices, 277.
Negligence, 115, 209.
Negroes and Slaves, 181.
New Books Received. Mylne & Craig's Reports, Vol. IV. (Dunlop's Am. ed.) 40; Craig & Phillip's Reports, (Dunlop's Am. ed.), 40; Sanford's New York Chancery Reports, Vol. II., 40; Smedes & Marshall's (Mississippi) Reports, Vol. VII., 91; Hill's (New York) Reports, Vol. VII., 91; Beavans's Ch. Reports (Dunlop's Am. ed.), Vol. VII., 138; Sabine's American Loyalists, 138; Angell on Tide Waters, 138; Addison on Contracts, 184; Davis's Massachusetts Justice, 184.
New Jersey Law School, 524.
New promise, 81.
New Trial, 35, 89.
New York Lunatic Asylum, Notice of report of, 39.
New York, New constitution of, 95; election, 143; important movement in, 331; Commission, 477.
Northwestern territory ordinance, 127.
Notarial duties in Louisiana, 238.
Notes. See *Bills of Exchange*.
Notices of New Books. Holthouse's Law Dictionary, 39; Fourth Report of N. Y. State Lunatic Asylum, 39; Douglass's (Michigan) Reports, Vol. I., 90; Sandford's (N. Y.) Reports, Vols. I. and II., 137; Laws of the United States, 1846-7, 138; Joy's Letters on Legal Education in England, 138; Smith's Compendium of Mercantile Law, (Holcombe & Gholson's Am. ed.) 183; Holcombe's Leading Cases, 183; Denio's (New York) Reports, Vol. II., 184; Davis's Massachusetts Justice, 232; Day's (Conn.) Reports, Vol. 17, 234; Digest of the Maryland Reports, 235; Angell on Tide Waters, 235; Oliver Smith's Will (Report of Proceedings), 235; Tucker's Principles of Pleading, 278; Wendell's Blackstone, 282; Hale's Pleas of the Crown (Stokes & Ingersoll's Am. ed.) 283; Burge on Suretyship (1st Am. ed.) 284; Select American Decisions, 284; Gilman's (Illinois) Reports, Vol. III., 284; Vermont Reports, Vol. XVIII, 325; Argument List of Philadelphia Law Academy, 325; Woodbury & Minot's Reports, Vol. I., 376; Roper on Legacies, by H. H. White, 377; Curtis (G. T.) on Copyright, 377; Ellis's Abridgment of the Criminal Law of the United States, 418; Review of Decisions in the Fifteenth Volume of Ohio Reports, 419; Supplement to the United States Digest, 471; Collyer on Partnership, by J. C. Perkins, 473; Gilman's (Illinois) Reports, 518; Greenleaf on Evidence, Vol. II., 519; Holcombe's Digest, 520; Campbell's Lives of the Lord Chancellors, 520; Massachusetts State Record, 520.
Notice to indorsers, 80; reasonable notice to be given defendant of time and place of making motion for an injunction, 81.
Nuisance, indictment for, 127; doctrine of prescription applied to, 428.

O.

Oath, form of, 120.
Obstruction of claimants of fugitive slaves. 1. In an action under the statute of Feb. 12, 1793, containing separate counts for *harboring* slaves and *obstructing* claimants, several penalties cannot be recovered for the

same act, nor can the same act be separated into distinct charges. Driskell *v.* Parish, 395.

2. The same act cannot be construed both as a *harboring* and *obstruction*, *ib.* 396.

Obituary Notices.
Barker, George P., 526.
Bosanquet, Sir John B., 334.
Brashears, Samuel, 430.
Buchanan, Thomas, 335.
Durfee, Job, 239.
Fox, Addison, 46.
Goldthwaite, Henry, 431.
Harper, William, 335.
Hubbard, Samuel, 478.
Huntington, Jabez W., 383.
Kendall, Joseph G., 335.
Kent, James, 429.
Lyman, Joseph, 431.
Merrill, Benjamin, 239.
Reed, Isaac Gardner, 46.
Reid, James, 526.
Saffold, Reuben, 383.
Ward, Artemas, 334.
Wilde, Richard Henry, 334.
Worthington, Charles, 190.
Wright, Silas, 237.

Obstructions in navigable rivers, 127.
Offences at common law, 127.
Officers, 89, 118.
Offset, 207.
Ohio Reports, controversy about, 190, 238, 419; letter from Chief Justice Birchard, denying the charges of W. M. Corry, 521.
Ordinance of 1641, 76, 78.

P.

Pardoning Convicts to make them Witnesses, 41.
Partition.

Where the heirs of a party deceased claim partition of his estate, the judgment creditors of a third person, who claim that a portion of the estate belonged to their debtor, may require the claimants to prove that the estate belonged to the deceased. Martha Simmons's Estate, 563.

Partners, 131.
Partnership, 89; secret, 409.

1. Partnership creditors are entitled to a preference over separate creditors, out of the partnership assets of an insolvent firm, *in equity*, notwithstanding the separate creditors had first attached those assets. But at *law*, in Vermont, the claim of the separate creditors, under the attachment, would be void. Washburn et al. *v.* Bank of Bellows Falls, 249.

2. Sufficient for creditors to make out a *prima facie* case of insolvency; an account may be taken to disprove the insolvency, if the defendants desire it; but at their own expense, *ib.* 250.

3. The partnership creditors having made separate successive attachments, and resorted to a Court of Equity for relief against the attachments of the separate creditors, must share the assets equally, *pro rata*, and not in the order of their attachments, *ib.*

4. In Vermont, at law, both separate and joint creditors may attach either separate or joint property, and upon execution sell it in satisfaction of their judgment without regard to the equities of the debtors. Bardwell *v.* Perry et als. 257.

5. But in equity, by the very law of partnership, the partnership effects are pledged to each separate partner, until he is released from all his partnership obligations; and while the partnership continues, the partnership creditors may avail themselves of this lien to secure a preference; but if it be dissolved, and the effects assigned to one partner, it would *seem* that this lien is gone, *ib.* (See *Equity*.)

6. Where money is advanced to a merchant, and the premium or profit for its use is not fixed or certain, but depends on the accidents of trade, the person making the advance will be liable as a partner to such merchant's creditors; although he is not to risk any part of his advance, or share in the losses of the trade. Oakley *v.* Aspinwall et al. 409.

Patent and *Patent Laws*, 35, 131, 182, 469.
Performance, specific, 207.
Peril of the Seas, 131.
Perjury, 120.
Philadelphia Law School, 325.
Plea of Insanity in Criminal Cases, 97.
Pleading, Tucker's Principles of, noticed, 278.
Pleading (see *Corporation*), *Trespass*, Bankruptcy.

1. Where, in an action of assumpsit, the defendant pleaded *non assumpsit* to the whole declaration, and a special plea, and on demurrer to a replication to the special plea, the replication was adjudged good; *held*, that the defendant might attach the declaration, and the declaration being held bad on general demurrer, judgment was given for the defendant. Auburn and Owasco Canal Co. *v.* Leitch, 201.

2. Whenever, in pleading, a demurrer is reached, it is an invariable rule to give judgment against the party who committed the first fault in pleading, if the fault be such as would make the pleading bad on general demurrer, *ib.*

3. Under this rule a defendant may attach a declaration, although he has previously pleaded the general issue, *ib.*

Pledges, 277.
Poor Debtor, 344.

1. A debtor in prison, to whom a commissioner has refused to administer the oath, may take it before another commissioner afterwards, if, in the meantime, he has gone into insolvency and surrendered all his property to assignees. The debtor's right in the latter case relates to a different period and a different condition of property. *Ex parte* Snow, 344.

2. A second hearing might be proper under such circumstances as would justify a rehearing or new trial in other proceedings at law, *ib.*

3. *Semble*, that if the district judge allow a second examination, and the examination takes place and the oath is administered, such proceedings must be regarded as conclusive in favor of a petition by the debtor for a *habeas corpus* to the jailor who had refused to discharge him, *ib.*

4. Where the debtor has surrendered all

his property, doubtful points should be construed in favor of his personal liberty, *ib.*
5. Where no injury or suffering is likely to happen during a hearing on a rule to show cause, the writ of *habeas corpus* will not issue, till after such hearing, *ib.*
Post, Boston, 143.
Postmaster, 131.
Practice, 78; MASSACHUSETTS PRACTICE.
Practice in Equity, 34.
Preëmption, 505.
Prescription, doctrine of applied to nuisances, 428.
President of the U. S. See *Treaty.*
Principal and agent, 231, 277, 323.
Principal and Surety, 277.
Privileged Communications, 135.
Produce, Bank Liens upon, 381.
PROFITS, INSURANCE UPON, 433.
Promissory Note, 77, 80, 81, 323.
Promissory Note, action on, by party not interested in, 77; notice to indorsers, 80; new promise by one one of several copartners, 81.
Proprietary grants, 505.
Punctuation erroneous, in U. S. Laws, 143.

Q.

Quasi Corporations, article on, 238.
Queen v. Dunn, Account of case, 93.

R.

Railroad; liability of proprietors, 117; corporations, 324.
Reciprocity of remedies, 35.
Reid, Isaac Gardner, Obituary notice of, 46.
Rehearing in Equity, 74.
Reid, James, Obituary notice of, 526.
Religious corporations. See *Trustees.*
Remedies, reciprocity of, 35.
Reminiscences of Vermont Judges, 423.
Right, writ of, 333.
Riparian proprietors, 76, 505.
Robbery of clerk's office, 333.
Roper on Legacies, by White, notice of, 377.
RULE OF DAMAGES IN ACTIONS EX DELICTO, 49, 188.
Rules of the Bar in Maine, 45.

S.

Sabine's American Loyalists, received, 138.
Salaries and fees, 425.
Sale by auction, 38; sale of land, 73; fraudulent sale, 118, 131.
Saffold, Reuben, Obituary notice of, 383.
Sandford's Reports, Vol. II., received, 40; notice of Vol. I, and II, 137.
Satisfaction. See *Accord.*
Seamen, 470.
Secret Partnership, elements of, 409.
Select American Decisions, notice of, 284.
Servant of teamster, his liability, 75.
Services professional of Counsel, 121; action by counsel for compensation, 121; principles on which compensation is to be estimated, 121. See *Attorney.*
Sheriff's return, 238.
Ships and Shipping, 133, 324.
Slander, 135.
Slaves. See *Obstruction.*
Smedes & Marshall's Reports, Vol. VII., notice of, 91.
Smith's Mercantile Law, (Holcombe's) notice of, 183.
SMITH'S (OLIVER) WILL, notice of report of case, 235, 289, 331.
Solicitor, 226; lien of, 516.
Specific performance, 207.
State Laws, (See *Contract,*) 264, imposing a tax on officers and crew of vessels unconstitutional, 301.
State Sovereignty, 127; legislation, 127.
Statute construction of, 119; of Ohio as to husbands and wives, 427.
Statute of Limitations, 81, 175, 275; of frauds, 133, 229, 285.
Stillwell warrants, 422.
Story's opinion (Mr. Justice) 333.
Sunday. See *Contract.*
Supreme Court of Massachusetts, new Judges of, 525.
Surety, 133; and principal, 277.
Suretyship, Burge on, notice of, 842.

T.

Taxes, collection of, by distraint, 74.
Tenant, 278.
Tennessee, Letter from, 142.
Texas.
1. The Republic of Texas did not become a state of this Union, nor subject to the constitution and laws of the U. S., before Feb. 16, 1846. Cocke *v.* Calkin et al. 488.
2. A treaty or confederation and a constitutional compact may be established at one time to go into effect *in futuro*, *ib.*
3. The approval by the Congress of the U. S., of a state constitution, does not necessarily act as an admission of the state, nor abrogate its former government, *ib.*
4. The compact between Texas and the U. S., is of paramount obligation and renders the subsequent acts of either party repugnant thereto, null and inoperative, *ib.*
5. Its admission into the Union as a state, did not, of itself, extend the constitution or laws of the U. S. over its territory; but Texas had the right and power to stipulate that its former government and laws should continue unaffected by the change, to a certain period, *ib.*
6. Her laws regulating impost duties continued in full force unimpaired by the act of Congress of Dec. 29, 1845, until Feb. 16, 1846, *ib.*
Tide waters, bridges over, 127.
THE LAW'S DELAY IN MASSACHUSETTS, 145.
THE SHIP HOLDER BORDEN, 193.
Thurlow, Lord, anecdote of, 190.
Trade marks, 35.
Treaty. See *Texas.*
1. The president of the U. S. cannot execute the power of extradition under a treaty, without both legislative and judicial sanction. Matter of Metzger, 357.
2. State courts have no original authority

in such questions, whether the federal courts ought not to entertain jurisdiction,—*quære*, *ib*.

3. A judge of the District Court of the U. S., sitting in chambers, has no authority to require the surrender of a criminal under the treaty, *ib*.

4. Where such judge has exercised such power, and the president has directed the surrender of the prisoner, the judge of a state court may, upon a writ of *habeas corpus*, inquire into the legality of the president's mandate, and the course of the district judge, *ib*.

5. Where the two originals of a treaty are in different languages, and they can be made to agree without violence, that construction which establishes this conformity, ought to prevail, *ib*.

6. By the treaty with France of 1843, no prisoner can be surrendered by one government, until he has been indicted or arraigned, *ib*.

Trespass on the case.

1. May be sustained for an injury to personal property, which is the result merely of the *negligence* of the defendant, although the injury is immediate. Claflin *v.* Wilcox, 209.

2. The plaintiff alleged, that, through the negligence, carelessness and improper conduct of the defendant, the sleigh of defendant struck the horse of plaintiff, and so injured him that he died; and the evidence, on trial, proved the facts substantially as alleged, and it was *held*, that the plaintiff might sustain his action of trespass on the case, *ib*.

Trial, 78.

Trial of negroes in Alabama, 44.

Triers of challenges. See *Challenge*.

Trover, 324.

Trust and Trustee, 231.

Trustees.

It is the duty of all trustees of religious corporations to devote the temporalities in their charge fully and fairly to carry out the intention of their founders; which intention may be inferred from the terms of the grant and the contemporaneous acts of parties, and is the sole criterion by which to determine whether property has been withdrawn from purposes to which it was dedicated. Courts of law will enforce performance of their duty by trustees, unless it would involve the violation of some law of the land. People ex rel. Griffin *v.* Steele et al. trs. 541.

Trustee Process, attachment by, of funds in hands of assignee, 69, 265.

U.

United States, admission of Texas into the, 488.

United States, Public Laws of, notice of, 138.

United States Digest (supplement), notice of, 470.

Usage, 35.

V.

Valedictory of P. W. Chandler, 237.

Verdict, 324.

Vermont Reports, Vol. XVIII., notice of, 325.

Vermont Judges, Reminiscences of, 423.

Virginia, jurisdiction of general court of, 457.

W.

Walworth, Chancellor, Mr. Hoffman's address to, 478.

Ward, Artemas, Obituary notice of, 334.

Warrant, Messenger's, 264; effect and publication of, 264.

Washburne's (Vermont) Reports, Vol. III., notice of, 325.

Washington Bridge Co. v. *State of Connecticut*.

The charter of this company was a contract protected from invasion by the constitution of the United States, 58.

Webster, Daniel, and the Charleston Bar, 92, 94; Webster and Choate, 299.

Wendell's Blackstone, notice of, 282.

Widow, election of, 79; allowance to, 79.

Wife, husband and, 120; elopement of, 120; adultery of, 266.

Wilde, Richard Henry, Obituary notice of, 334.

Will, construction of, 113; Oliver Smith's, 289.

Williams, Thomas S., resignation of, 95.

Witness, 75; treatment of persons detained as witnesses, 428, 470; golden rules for the examination of, 475.

Woodbury & *Minot's* Reports, 143; notice of, 376.

Worthington, Charles, Obituary notice of, 190.

Wright, Silas, Obituary notice of, 287.

Writ of right, 333.

Y.

Yale Law Professors, resignation and appointment of, 238.

YOUNG, CHARRETIE AND, CASE OF, 481.

THE space devoted to the annual Index, and Table of Cases, prevents the publication of any obituary or critical notices in the present number. The editor acknowledges the receipt of the 13th volume of *New Hampshire Reports*, the *Report of the New York Commissioners*, and the valuable American reprint of the third series of Lord *Campbell's Lives of the Chancellors*. Obituary notices of Hon. JOHN QUINCY ADAMS, Hon. AMBROSE SPENCER, and Hon. HENRY WHEATON, are excluded on account of the crowded state of our columns.

The present number closes the tenth volume of the Reporter, of which only a portion has been under the charge of the present editor. He respectfully thanks his patrons and correspondents for the continued support which has been given to the work.

*** The Law Reporter will hereafter be published by Messrs. LITTLE & BROWN, 112 Washington street, Boston, to whom all communications may be addressed.